

FILED

2019 APR 26 PM 2:54  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

1 Steven Mark Rosenberg  
2 106 1/2 Judge John Aiso Street, PMB#225  
3 Los Angeles, CA 90012,  
4 310.971.5037  
5 Email: Founder@PuttingElders1st.org  
6 In Pro Per

7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 **Steven Mark Rosenberg,**

10 **Debtor**

)**District Court Case Number:**

)**CV 18-10188-AG**

)

)**Bankruptcy Court Case Number:**

)**1:17-bk-11748-VK**

)

)**Adversary Case Number:**

)**1:17-ap-01096-VK**

)

)

)**NOTICE OF MOTION AND**

)**MOTION TO ALTER OR AMEND**

)**A JUDGMENT (FRCP Rule 59(e))**

)**(FRCP Rule 60(b))**

)**Hearing Date:** June 3, 2019

)**Hearing Time:** 10:00A.M.

)**Judge:** Honorable Andrew J. Guilford

)**Place:** Court 10 D Santa Ana Division

)

)

13 **STEVEN MARK ROSENBERG**

14 **Appellant**

v.

15 **DEUTSCHE BANK NATIONAL**  
16 **TRUST COMPANY, AS TRUSTEE**  
17 **FOR ALLIANCE BANCORP**  
18 **MORTGAGE BACKED CERTIFICATE**  
19 **SERIES 2007-OA1, MORTGAGE**  
20 **ELECTRONIC REGISTRATION SYSTEMS,**  
21 **INC., OCWEN LOAN SERVICING, LLC**  
22 **ALLIANCE BANCORP, INC (ESTATE)**

)**NOTICE OF MOTION AND**

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)**Place:** Court 10 D Santa Ana Division

)

)

23 **Appellee(s)**

)

)

24 **TO THE HONORABLE COURT AND TO ALL PARTIES:**

25  
26 PLEASE TAKE NOTICE that on June 3<sup>rd</sup>, 2019 at 10:00A.M. or as soon thereafter as  
27 this matter may be heard in the above-entitled Court located at 411 West 4<sup>th</sup> St., Santa Ana,  
28 Steven Mark Rosenberg, the Appellant in this case, will move this Court to: to reconsider its  
April 01, 2019, dismissing my case due to lack of prosecution. It is presented in motion at

1 oral hearing my situation was due to extreme medical conditions ***leading up to***  
2 ***hospitalization.***

3  
4 This motion is based upon the following documents:

5  
6 Attached Motion with Exhibits "A" & "B", the complete files and records in this  
7 action, and upon such oral and documentary evidence as may be allowed at the hearing of  
8 this motion.

9  
10 DATED: April 26, 2019  
11  
12

13 By: Steven mark Rosenberg  
14 STEVEN MARK ROSENBERG  
15 Plaintiff/Appellant in Pro Per  
16  
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26  
27  
28

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7 **UNITED STATES DISTRICT COURT**  
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13 **STEVEN MARK ROSENBERG**

14 **Appellant**

v.

15 **DEUTSCHE BANK NATIONAL  
TRUST COMPANY, AS TRUSTEE  
FOR ALLIANCE BANCORP**

16 **MORTGAGE BACKED CERTIFICATE  
SERIES 2007-OA1, MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
INC., OCWEN LOAN SERVICING, LLC  
ALLIANCE BANCORP, INC (ESTATE)**

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)

)

22 **Appellee(s)**

)

)

23

24 **MOTION FOR RECONSIDERATION OF ORDER DISMISSING APPEAL  
FOR LACK OF PROSECUTION**

25

26 Steven Mark Rosenberg (hereinafter "Rosenberg" or "Plaintiff") hereby requests that the

27 Court reconsider its April 1, 2019 Order Dismissing Action for Lack of Prosecution For Failure

28

1 to Comply with the Court’s Order (Doc. 95) (the “Order”). In support hereof, Rosenberg  
2 respectfully represents as follows:

3 **I. Relevant Procedural History**

4 1. On June 30, 2017, Rosenberg filed a voluntary petition under Chapter 7 of the  
5 Bankruptcy Code. Rosenberg received a discharge on October 10, 2017.

6 2. On November 27, 2017, Rosenberg filed this adversary proceeding against the  
7 Defendants. The Complaint alleged, among other arguments, a violation of Federal Rule of  
8 Bankruptcy Procedure (“FRBP”) 3001(c)(2)(B) and (C), fraudulent concealment and violation of  
9 18 U.S.C. § 157, and sought both declaratory relief and a jury trial.

10 3. On February 13, 2018, the Defendants filed a Motion for Judgment on the  
11 Pleadings.

12 4. On May 14, 2018, the Court granted the Defendants’ Motion for Judgment on the  
13 Pleadings. (Doc. #49-50). The Court entered an amended judgment on June 7, 2018. (Doc.  
14 #56).

15 5. On June 11, 2018, Rosenberg filed a Motion to Alter or Amend Judgment (Doc.  
16 #58). The Court entered an Order denying the Motion on November 21, 2018 (Doc. #74).

17 6. On December 7, 2018, Rosenberg filed a Notice of Appeal (Doc. #78). On March  
18 15, 2019, the Court issued a minute order requiring Rosenberg to show cause in writing on or  
19 before March 27, 2019 why his Appeal should not be dismissed for lack of prosecution.

20 7. Please refer to Exhibit attached, and respectfully refer to Exhibit A. That Exhibit is a  
21 redacted true and correct copy of proof of hospitalization of the plaintiff. (From the period of  
22 March 27 to April 03). Respectfully provided without waiving his rights to protection of his  
23 medical records under HIPAA.

1       8. Rosenberg has been severely-ill since late-February. Without waiving his rights to  
 2 protection of his medical records under Health Insurance Portability and Accountability Act,  
 3 Privacy Rule (HIPAA). Rosenberg hereby attaches a photograph of him during a period of  
 4 hospitalization. Said photograph is attached hereto as Exhibit B.

5 **II. Cause Exists for the Court to Exercise its Discretion to Reconsider its Order**

6       Reconsideration may be sought within a reasonable time after entry of a judgment or  
 7 order, for relief from the final judgment or order for any of the following reasons: (1) mistake,  
 8 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable  
 9 diligence, could not have been discovered in time to move for a new trial under Fed. R. Civ. P.  
 10 59; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void;  
 11 (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that  
 12 has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other  
 13 reason that justifies relief. *See* Fed. R. Civ. P. 60(b); *see also* Fed. R. Bank. P. 9024.

14       As stated above, for the past two months Rosenberg has been severely-ill and also  
 15 dealing with repeated medical procedures. As of result of the procedures and his medical  
 16 condition, Rosenberg has been otherwise incoherent and temporarily incapable of handling the  
 17 prosecution of his Appeal. Rosenberg submits that his medical condition constitutes “excusable  
 18 neglect” under Fed. R. Civ. P. 60(b). Moreover, Rosenberg’s medical condition satisfies the  
 19 requirement for “any other reason that justifies relief”.

20       In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380 (1993), the  
 21 Supreme Court set forth the standard for determining what constitutes excusable neglect. “The  
 22 ordinary meaning of ‘neglect’ is ‘to give little attention or respect’ to a matter, or, closer to the  
 23 point for our purposes, ‘to leave undone or unattended to especially through carelessness.’...The

1 word therefore encompasses both simple, faultless omissions to act, and, more commonly,  
 2 omissions caused by carelessness...Congress plainly contemplated that the courts would be  
 3 permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or  
 4 carelessness, as well as by intervening circumstances beyond the party's control." *Id.* at 388. The  
 5 Supreme Court went on to set forth a four-part test for determining when neglect is excusable:  
 6 (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential  
 7 impact on the proceedings; (3) the reasons for the delay; and (4) whether the movant acted in  
 8 good faith. *Id.* at 395.

10 Rosenberg submits that application of the *Pioneer* test results in a finding of excusable  
 11 neglect. First, there is no danger of prejudice to the Defendant. Rosenberg filed an Appeal as a  
 12 matter of right and in fairness ought to have his Appeal heard. Secondly, the Court's Order  
 13 provided that Rosenberg must file a response in writing by March 27, 2019. The Order  
 14 dismissing Rosenberg's Appeal was filed on April 1, 2019. Thus, this Motion is being filed a  
 15 mere weeks after the Minute Order Response was due and just days after the Court's April 1<sup>st</sup>  
 16 Order became final.

17 Significant medical issues prevented Rosenberg from filing a timely Response pursuant  
 18 to the Court's order. The Ninth Circuit has held that delays due to medical reasons constitute  
 19 adequate reasons for delay under the standard. *See Lemoge v. United States*, Case No.: 08-56210  
 20 (9th Cir. 2009) (holding that a two month delay in complying with a deadline was excusable  
 21 where the movant was absent from his law office for a period of two months due to a staph  
 22 infection, "There is no question that Caruana could have handled his practice better, but under  
 23 the circumstances, Caruana provided adequate reasons for the delay.").

Unlike the *Lemoge* case, where the movant was himself an attorney, Rosenberg is a pro se litigant. Moreover, the delay in this case is a matter of weeks, not months. The Ninth Circuit has been more likely to find excusable neglect where one of the party's is pro se. *See Briones v. Riviera Hotel Casino*, 116 F. 3d 379 (9th Cir. 1997) (holding that a pro se plaintiff's opposition to a motion to dismiss filed three months late might be due to excusable neglect). Finally, Rosenberg has acted in good faith. He is filing this Motion as soon as practicable given his medical condition and as a pro se litigant, he is doing his best to prosecute this matter.

### III. Conclusion

WHEREFORE, based upon the foregoing, Rosenberg respectfully requests that this Court grant this Motion for Reconsideration; vacate the April 1, 2019 dismissal order; grant Rosenberg a reasonable extension to prosecute his Appeal; and grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

Steven Mark Rosenberg

Steven Mark Rosenberg

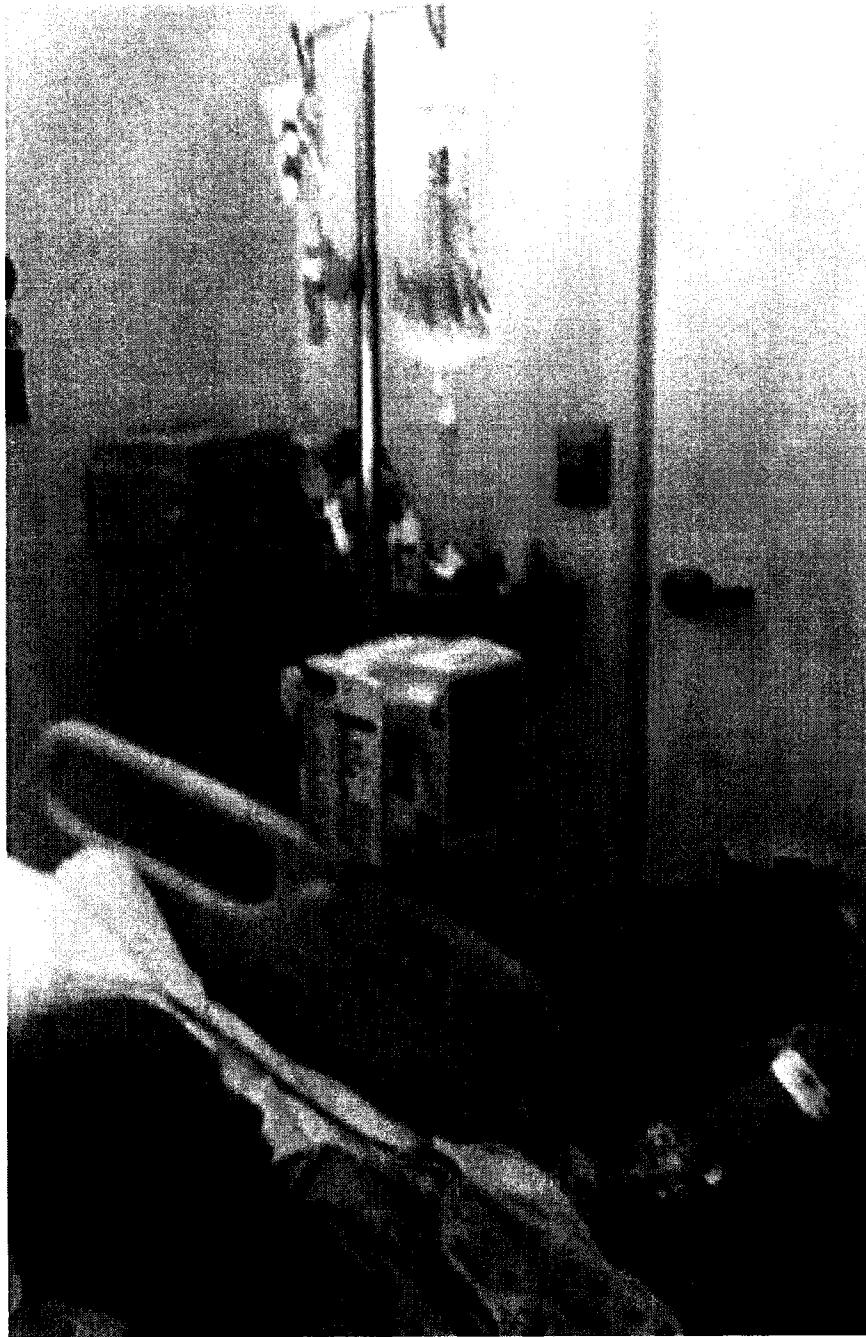
Dated: April 26, 2019

# Exhibit “A”



# Exhibit “B”

## Exhibit “B”



Plaintiff hospitalized from period of March 27, 2019 - April 3, 2019

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY(S)  
 STEVEN MARK ROSENBERG  
 106 1/2 JUDGE JOHN AISO ST. #225  
 LOS ANGELES, CA 90012  
 Phone: 310-971-5037  
 Email: founder@puttingelderslst.org

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

STEVEN MARK ROSENBERG	PLAINTIFF(S),  v.  Deutsche Bank National Trust Company, As Trustee for Alliance Bankcorp Mortgage Backed Certificate Series 2007, et al	CASE NUMBER  <b>District Case Number CV 18-10188-AG    Bankruptcy Case No. 1:17-bk-11748-VK    Adversary Case No. 1:17-ap-01096-VK</b>
	DEFENDANT(S).	<b>PROOF OF SERVICE</b>

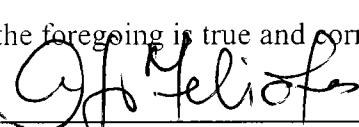
I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of LOS ANGELES, State of California, and not a party to the above-entitled cause. On APRIL 26, 2019, I served a true copy of Notice of Motion and Motion to Alter or Amend a Judgment, Motion to Alter or Amend a Judgment(FRCP Rule 59(e),FRCP Rule 60(b)) by personally delivering it to the person (s) indicated below in the manner as provided in FRCivP 5(b); by depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following: (list names and addresses for person(s) served. Attach additional pages if necessary.)

Place of Mailing: LOS ANGELES, CALIFORNIA

Executed on APRIL 26, 2019 at LOS ANGELES, California

Please check one of these boxes if service is made by mail:

- I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.
- I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.
- I hereby certify under the penalty of perjury that the foregoing is true and correct.

  
J. Melio  
 Signature of Person Making Service

1  
2 **ATTACHED SERVICE LIST**  
3

4 **MERS (Mortgage Electronic Registration Systems, Inc.)**  
5

Attn: T. Robert Finlay, Partner  
Cc: Nicole Dunn, Esq.  
4665 MacArthur Court, Suite 200  
Newport Beach, CA 92660

Ocwen Loan Servicing, Inc.  
c/o T. Robert Finlay, Partner  
Cc: Nicole Dunn, Esq.  
4665 MacArthur Court, Suite 200  
Newport Beach, CA 92660

United States Trustee (SV)  
915 Wilshire Blvd., Suite 1850  
Los Angeles, CA 90017  
213-894-6811  
U.S. Trustee

Deutsche Bank National Trust in  
Alliance Bancorp Trust 2007 OA-1  
c/o Robert Garrett of Law Firm of Garrett & Tully  
225 S. Lake , Suite 1400  
Pasadena, CA 91101

Estate of Alliance Bancorp. Inc.  
Attn: Charles A. Stanziale, Jr. Esq. Trustee  
100 Mulberry Street  
Newark, NJ 07102

Honorable Andrew J. Guilford  
Santa Ana Division  
Court 10D  
411 West 4<sup>th</sup> Street  
Santa Ana, CA 92701-4516